

Congress of the United States
Washington, DC 20515

September 19, 2019

Submitted via Regular Mail and Electronically
(https://www.regulations.gov/document?D=HHS_FRDOC_0001-0736)

Mitchell Berger, SAMHSA
5600 Fishers Lane, Room 18E89C
Rockville, MD 20857

Suzette Brann, SAMHSA
5600 Fishers Lane, Room 13E01B
Rockville, MD 20857

RE: Public Comment Opposing Notice of Proposed Rule Making
42 CFR Part 2
RIN No. 0930-AA30
Federal Register No. 2019-17816

Dear Mr. Berger and Ms. Brann:

Please accept this correspondence in opposition to the proposed rule published in a Notice of Proposed Rule Making (NPRM) on August 26, 2019 and identified as RIN Number 0930-AA30, Federal Register Number 2019-17816. This opposition is being filed within the public comment period that expires on September 25, 2019 at 5:00 p.m. EST.

As a Member of Congress serving on the Freshmen Working Group on Addiction and the Bipartisan Heroin and Opioid Task Force, my opposition to the Substance Abuse and Mental Health Services Administration's (SAMHSA) proposed rule to Section 2.63 of 42 CFR Part 2 is based on my abiding commitment to create a culture that eliminates stigma and encourages individuals with addiction to seek treatment. For the reasons set forth herein, SAMHSA should not adopt its proposed rule.

SAMHSA's proposed rule would amend the Confidentiality of Substance Use Disorder Patient Records regulation in such a way that a court could authorize disclosure of confidential communications between provider and patient when the disclosure is necessary to the investigation or prosecution of an "extremely serious crime," even if the patient is not a target, subject, or suspect of the investigation or prosecution. Not only is this an encroachment on traditional notions of provider-patient privilege, it is also a backroad through which prosecutors can go on fishing expeditions, without probable cause against the patient, to discover incriminating information against others.

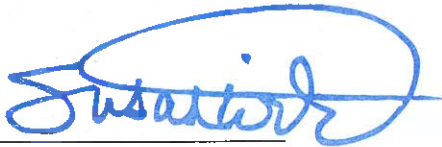
(Additionally, the proposed rule includes "drug trafficking" as an "extremely serious crime." Historically, the definition of "extremely serious crime" has been reserved for cases of murder,

rape, and other crimes of violence. The proposed rule is ambiguous and overinclusive insofar as it does not provide a definition of "drug trafficking," much less cite to any section of the criminal code. Many individuals with drug addictions have been on the purchasing end of minor transactions that could constitute "drug trafficking," making a patient's records available to be screened in nearly every circumstance.)

Under threat of prosecution, SAMHSA's proposed rule will have a chilling effect on the number of individuals seeking treatment, and it will prevent the candor necessary to appropriately treat an individual. Over 90% of individuals with substance use disorders are not currently accessing treatment. As the American Association for Treatment of Opioid Dependence stated, "[p]atients are already anxious about the proposed new rule and the threat of opioid treatment programs sharing their sensitive health information...which may be accessible to entities like law enforcement who could then use the information to prosecute patients."

As stated, *supra*, I respectfully request that SAMHSA not adopt its proposed rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan Wild", with a large, loopy flourish above the name.

SUSAN WILD
Member of Congress